Office Action Summary	Application No.	Applicant(s)	
	10/608,191	PATIEJUNAS, KESTUTIS	
	Examiner	Art Unit	
	RAMY M. OSMAN	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 December 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) *13-17* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12 and 18-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 June 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. This action is responsive to amendment filed on December 13, 2007. Claims 1-26 are pending examination.

Election/Restrictions

2. Claims 13-17 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Election was made **without** traverse in the reply filed on 12/13/07.

Drawings

3. The drawings filed on 6/30/2003 are acknowledged and are acceptable.

Specification

4. The disclosure is objected to because of the following informality: ¶ 1 line 2 is missing a patent application number. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 9 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claim recites "…port is in a non-drained state". Applicants disclosure fails to detail what exactly is a "non-drained state". This limitation is not supported in the specification, and one of ordinary skill in the art will not be able to figure out what Applicant means by this limitation. **(See MPEP chapter 2163 section I.(A))** Although Figure 3 and paragraph 25 of Applicants specification illustrate state machines which represent successive states of communication processing, nowhere is it mentioned what a "non-drained state" is, or even what a "drained state" may be.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 18 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is unclear as to which statutory category it falls within. The preamble recites: "*A transmissible message, the transmissible message being generated according to a method of:…*". The first limitation "*A transmissible message*" appears to present the claim as a product claim. Whereas the subsequent limitation "*according to a method of:…*", along with the body of the claim, present steps that appear as a method-style claim. Therefore, according to the first limitation, only the patentability of the product claimed (i.e. "transmissible message) need be established (where the patentability of the remainder of the claim need not be established). **See MPEP 2113** Despite this, since Applicant seems to have intended a method claim, the claim is treated as a method claim and is rejected as detailed below.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 35 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim recites "*A transmissible message*". If indeed Applicant is attempting to claim a "message", then this is nothing but a data structure which does not fall within any of the statutory categories. It is not directed to a process since its not a series of steps. The claim is also not directed to a machine since its not a device(s), nor directed to a manufacture since its not produced from raw materials. And it is also clearly not directed to a composition of matter and is therefore nonstatutory. **See MPEP Chapter 2106.01 Section I.**

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1,5-7,10,12,18 & 22-24 rejected under 35 U.S.C. 102(e) as being anticipated by Ghose et al (US Patent No 7,305,486).

12. In reference to claim 1, Ghose teaches a method for initiating the transmission of data, comprising:

establishing a connection from at least one data source to a destination (column 9 lines 53-56, Ghose discloses establishing a connection between two hosts);

generating at least one session to transmit data via the connection from the at least one data source to the destination (column 9 lines 53-56 and column 13 lines 61-64, Ghose discloses utilizing the connection for sending/streaming data (i.e. session));

queuing a set of messages from the at least one session for transmission over the connection to the destination (column 13 line 62 – column 14 line 3, Ghose discloses depositing the data into a buffer (i.e. queue) within the sending host, to send it to a receiver); and

transmitting messages from the queued set of messages based upon completion information (column 14 lines 1-5 and column 15 lines 7-21, Ghose discloses transmitting the data to the receiver based upon available number of credits (i.e. completion information)).

13. In reference to claim 5, Ghose teaches a method according to claim 1, wherein the step of generating at least one session comprises a step of invoking an application programming interface (column 10 lines 56-60,66,67, Ghose discloses API with network applications).

14. In reference to claim 6, Ghose teaches a method according to claim 5, wherein the step of invoking an application programming interface comprises a step of receiving a session acceptance from the destination (column 9 lines 58-65 and column 10 lines 66,67, Ghose discloses 3-way handshaking which includes session/connection acceptance).

15. In reference to claim 7, Ghose teaches a method according to claim 1, wherein the step of queuing a set of messages comprises a step of queuing the set of messages in at least one input/output buffer (column 13 line 64 – column 14 line 3).

16. In reference to claim 10, Ghose teaches a method according to claim 1, wherein the step of transmitting comprises a step of asynchronously transmitting messages from the queued set of messages (column 14 lines 1-5 and column 15 lines 7-21, Ghose discloses data is sent in intervals in accordance with the number of credits (i.e. asynchronously).

17. In reference to claim 12, Ghose teaches a method according to claim 1, wherein the step of transmitting comprises a step of transmitting via a transport layer (column 10 lines 34-38).

18. In reference to claims 18 & 22-24, these claims correspond to the method claims of claims 1 & 5-7 respectively. Therefore, claims 18 & 22-24 are rejected based upon the same rationale as given for claims 1 & 5-7 above.

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

20. **Claims 2-4,11,19-21 & 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Ghose et al (US Patent No 7,305,486) in view of Gilman et al (US Patent Publication No 2003/0079121)**.

21. In reference to claim 2, Ghose teaches a method according to claim 1. Ghose fails to explicitly teach wherein the step of establishing a connection comprises a step of establishing a connection in a pipe. However, Gilman teaches secure end-to-end communication in a network by utilizing one of a variety tunneling protocols (i.e. pipe) which provide advanced security

features for communication (Gilman, ¶s 29 & 30). It would have been obvious for one of ordinary skill in the art to modify Ghose wherein the step of establishing a connection comprises a step of establishing a connection in a pipe as per the teachings of Gilman for the purpose of providing advanced security features in end-to-end communications.

22. In reference to claim 3, Ghose teaches a method according to claim 1. Ghose fails to explicitly teach wherein the step of establishing a connection comprises a step of authenticating at least one of the at least one source and the destination. However, Gilman teaches dual authentication utilizing a secure VPN communication link between computers for guaranteeing non-tampering of transmitted data (Gilman, ¶ 26). It would have been obvious for one of ordinary skill in the art to modify Ghose wherein the step of establishing a connection comprises a step of authenticating at least one of the at least one source and the destination as per the teachings of Gilman for the purpose of creating a secure communication link between computers and for guaranteeing non-tampering of transmitted data.

23. In reference to claim 4, Ghose teaches a method according to claim 3, wherein the step of authenticating comprises a step of authenticating both the at least one source and the destination (Gilman, ¶ 26, see rationale for claim 3).

24. In reference to claim 11, Ghose teaches a method according to claim 1, wherein the step of transmitting comprises a step of transmitting encrypted messages from the queued set of messages. However, Gilman teaches encryption utilizing a secure VPN communication link between computers for guaranteeing non-tampering of transmitted data (Gilman, ¶ 26). It would have been obvious for one of ordinary skill in the art to modify Ghose wherein the step of transmitting comprises a step of transmitting encrypted messages from the queued set of

messages as per the teachings of Gilman for the purpose of creating a secure communication link between computers and for guaranteeing non-tampering of transmitted data.

25. In reference to claims 19-21 & 26, these claims correspond to the method claims of claims 2-4 & 11 respectively. Therefore, claims 19-21 & 26 are rejected based upon the same rationale as given for claims 2-4 & 11 above.

26. **Claims 8,9,25 rejected under 35 U.S.C. 103(a) as being unpatentable over Ghose et al (US Patent No 7,305,486) in view of Lucovsky et al (US Patent No 6223207).**

27. In reference to claim 8, Ghose teaches a method according to claim 1. Ghose fails to explicitly teach wherein the message completion information comprises results from a completion port operation of at least one of sending or receiving. However, Lucovsky teaches a completion port utilized for reporting the I/O completion status of a send/receive queue (Lucovsky, column 9 lines 42-51). It would have been obvious for one of ordinary skill in the art to modify Ghose wherein the message completion information comprises results from a completion port operation of at least one of sending or receiving as per the teachings of Lucovsky for the purpose of reporting the I/O completion status of a send/receive queue.

28. In reference to claim 9, Ghose teaches a method according to claim 8, further comprising a step of throttling message traffic in the at least one input/output buffer when the completion port is in a non-drained state (Ghose, column 14 lines 1-5 and column 15 lines 7-21).

29. In reference to claim 25, this claim corresponds to the method claim of claim 8. Therefore, claim 25 is rejected based upon the same rationale as given for claim 8 above.

Conclusion

30. The above rejections are based upon the broadest reasonable interpretation of the claims. Applicant is advised that the specified citations of the relied upon prior art, in the above rejections, are only representative of the teachings of the prior art, and that any other supportive sections within the entirety of the reference (including any figures, incorporation by references, claims and/or priority documents) is implied as being applied to teach the scope of the claims.

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached Form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMY M. OSMAN whose telephone number is (571)272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RMO
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